

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

U.S. SECURITIES AND EXCHANGE  
COMMISSION

Plaintiff,

Case No. 1:18-cv-5587

v.

EQUITYBUILD, INC., EQUITYBUILD  
FINANCE, LLC, JEROME H. COHEN,  
and SHAUN D. COHEN,

Judge John Z. Lee

Defendants.

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**CERTAIN LENDERS' MOTION FOR ADDITIONAL TIME TO FILE AN OBJECTION OR RESPONSE TO THE RECEIVER'S MOTION FOR ENTRY OF AN ORDER: (1) ESTABLISHING CLAIMS BAR DATE; (2) FINDING THAT THE RECEIVER GAVE FAIR, ADEQUATE, AND SUFFICIENT NOTICE TO ALL INTERESTED PARTIES; AND (3) APPROVING PROOF OF CLAIM FORM AND SUMMARY PROCEDURES**

The following noteholders respectfully file this motion ("Motion") seeking additional time to file their objection or response to the Receiver's Motion for Entry of an Order (1) Establishing Claims Bar Date; (2) Finding that the Receiver gave Fair, Adequate, and Sufficient Notice to all Interested Parties; and (3) Approving Proof of Claim Form and Summary Procedures ("Receiver Motion") [Docket No. 241]: (1) Freddie Mac; (2) Citibank N.A., as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB48; (3) U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2017-SB30; (4) U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2017-SB41; (5) U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through

Certificates, Series 2018-SB50; (6) Federal National Mortgage Association (“Fannie Mae”); (7) Wilmington Trust, National Association, as Trustee for the benefit of the registered holders of UBS Commercial Mortgage Trust 2017-C1, Commercial Mortgage Pass-Through Certificates, Series 2017-C1 (“*Trust*”); (7) BMO Harris Bank N.A.; (8) Midland Loan Services, a Division of PNC Bank, National Association; and (9) BC57, LLC (collectively, “Lenders”). In support of this Motion, the Lenders state as follows:

1. The Receiver’s First Status Report notes that this case involves 24 institutional mortgages. *See* Receiver’s First Status Report, ECF No. 107. The Lenders’ collateral involves no less than 89 multifamily properties and rent generated from those properties, and per the Receiver’s report, the collective original principal balance of the amount loaned by the various institutional lenders is \$55,441,000.

2. On February 7, 2019, this Court ordered the Receiver to file his motion setting forth a proposed claim process by February 22, 2019. Said claim process was to include a procedure for limited discovery as directed by Judge Lee at the December 18, 2018 status hearing:

THE COURT: It seems to me that that sort of limited discovery may be something that can be built into the claims process... Because while certain interest-holders may want some limited discovery, others may not. So perhaps that’s something the receiver can think about and talk to the various parties about, so that whatever questions they have can be addressed in the information that the receiver has.

3. The purpose of the request for limited discovery was to allow the court to consider arguments determining the priority of the lien claims of the institutional lenders versus possible lien claims of individual investors, which the Lenders agree needed to be resolved prior to the Receiver liquidating collateral which secured their respective loans.

4. At 5:05 p.m. on Friday, February 22, 2019, the Receiver Motion was filed (without input from any counsel for the institutional lenders) and scheduled for hearing on February 27, 2019.

5. Rather than include a discovery procedure, the Receiver Motion merely provides in Section 5 that the Receiver intends on proposing a discovery schedule to the Court to account for reasonable discovery that the Receiver deems necessary and appropriate. The Receiver Motion does not provide when that discovery process would begin, but only provides it would hopefully be completed in advance of the submission of a proposed distribution plan, which may not occur for nine to twelve months after the Claims Process is initiated and after the collateral securing the institutional lenders loans is liquidated by the Receiver at amount he alone controls.

6. Lenders have significant issues with the Receiver Motion and claims process and believes the court should first determine the priority of the Lenders liens against the Properties, before the Receiver is allowed to proceed with a costly and time consuming Claims Process.

7. The Lenders do not want any lack of a response to the Receiver Motion to be deemed as consent to the proposed Receiver Motion, but the Lenders need additional time to complete its response and objection. In addition, in order to avoid multiple responses being filed, the Lenders need time to coordinate a formal objection to be filed by all or a majority of the Lenders to this Motion.

### **ARGUMENT**

8. The Receiver Motion will impact the respective rights and remedies of the Lenders and any individual investors. Given the finality of the Claims Process and its

impact on the parties, it is appropriate to provide the Lenders, other institutional lenders and individual investors, with the opportunity to object and to be heard.

9. As noted in prior filings with the Court, the Receiver operates such properties subject to existing laws and takes subject to liens attached to those properties. See Reply in Support of Motion of Creditor Federal Home Loan Mortgage Corporation (“Freddie Mac”) Concerning Rents Collected by the Equity Receiver, ECF No. 140; see also *S.E.C. v. Madison Real Estate Grp., LLC*, 647 F. Supp. 2d 1271, 1277 (D. Utah 2009); *U.S. Commodity Futures Trading Comm’n v. AlphaMetrix, LLC*, No. 13 C 7896, 2017 WL 5904660, at \*2, n.3 (N.E. Ill. Mar. 9, 2017); 28 U.S.C. § 959(b).

10. As such, in light of the material impact of the Claims Process on the Lenders and other parties’ substantive rights as it relates to the collateral securing the various institutional investor loans and the Properties under the Receiver’s control, the Lenders respectfully requests this Court grant Trust until March 13, 2019 to file their response and objection to the Receiver’s Motion for the Court’s consideration.

Dated: February 26, 2019

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| <p><b><u>/s/ Mark Landman</u></b><br/>Mark Landman (<a href="mailto:mldman@lcbf.com">mldman@lcbf.com</a>)<br/>Landman Corsi Ballaine &amp; Ford P.C.<br/>120 Broadway, 27th Floor<br/>New York, NY 10271<br/>Ph: (212) 238-4800<br/>Fax: (212) 238-4848<br/><i>Counsel for Freddie Mac</i></p> | <p>Respectfully submitted,<br/><b><u>/s/ James M. Crowley</u></b><br/>Plunkett Cooney, PC<br/>221 N. LaSalle Street, Suite 1550<br/>Chicago, IL 60601<br/>(312) 607-6607<br/><a href="mailto:jcrowley@plunkettcooney.com">jcrowley@plunkettcooney.com</a><br/>Counsel for Wilmington Trust, National Association, as Trustee for the benefit of the registered holders of UBS Commercial Mortgage Trust 2017-C1, Commercial Mortgage Pass-Through Certificates, Series 2017-C1</p> |
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served on February 26, 2019 by filing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

/s/ James M. Crowley

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